

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v. CRIMINAL NO. 03-40 ERIE

DEMOND POETRY BEASON

RESENTENCING

Proceedings held before the HONORABLE
SEAN J. McLAUGHLIN, U.S. District Judge,
in Courtroom C, U.S. Courthouse, Erie,
Pennsylvania, on Monday, February 6, 2006.

APPEARANCES:

CHRISTIAN A. TRABOLD, Assistant United States
Attorney, appearing on behalf of the Government.

THOMAS W. PATTON, Assistant Federal Public

Ronald J. Bench, RMR - Official Court Reporter

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1 PROCEEDINGS

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3 (Whereupon, the proceedings began at 9:10 a.m., on
4 Monday, February 6, 2006, in Courtroom C.)

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6 THE COURT: This is the time set for resentencing in
7 the case of United States versus Demond Poetry Beason. It's
8 docketed at Criminal No. 03-40 Erie. Mr. Patton, do you have a
9 second position with respect to sentencing factors?

10 MR. PATTON: Your Honor, first off, I want to again
11 state for the record we have several objections to the
12 calculations of the guidelines.

13 THE COURT: They're all incorporated.

14 MR. PATTON: We haven't --

15 THE COURT: Not to interrupt you, this only came
16 back from the circuit on Booker?

17 MR. PATTON: Correct. The case was not even fully
18 briefed before the Third Circuit, when the court issued kind of
19 its protocol on how they were going to handle Booker

20 resentences. By consent of the parties, the Third Circuit
21 remanded the case to this court for resentencing.

22 THE COURT: Okay.

23 MR. PATTON: I think that this case, the sentence in
24 this case really hinges on the phrase in Section 3553(a), that
25 the sentence has to be "sufficient, but not greater than

1 necessary" to comply with the goals of sentencing. Because
2 even as your Honor recognized the first time around, the
3 sentence called for by the guidelines in this case, by virtue
4 of the career offender enhancement, was really out of
5 proportion with the offense that occurred here. And, of
6 course, you never want to minimize a crime, and a crime of this

7 nature that is not a victimless crime, Ms. Niemeyer was

8 assaulted and she did sustain some mild injuries. So I don't

9 in any way try to denigrate that.

10 But I think that you have to realize that there are

11 crimes that are more serious than others and in the larger

12 scheme of things, this was not the crime of the century. In

13 that the sentence called for by the guidelines was way too

14 harsh. And that in this case, when you try to decide what is

15 "sufficient, but not greater than necessary," I believe that a

16 sentence without using the career offender enhancement is

17 appropriate in this case.

18 A sentence of 92 to 115 months is adequate to

19 reflect the seriousness of the offense and to promote respect

20 for the law, and provide just punishment for the offense. When

21 you're talking about, even at the high end of the range, close

22 to 10 years for this offense, that sentence cannot be called by

23 anyone as a slap on the wrist or somehow a lenient or light

24 sentence.

25 And a sentence of close to 10 years is enough to

1 deter other individuals. It incapacitates Mr. Beason for 10
2 years, which accomplishes the goal of protecting the public
3 from further crimes. And 10 years is enough to provide any
4 educational or vocational training, medical care that Mr.
5 Beason needs.

6 I'm sure you reread the presentence report, again,
7 if you look at the three convictions he has as an adult. One's
8 for selling two \$20 rocks of crack cocaine. One is for selling
9 two fake rocks of crack cocaine. And one is a resisting
10 arrest, struggling with a police officer when they were
11 arresting him on an outstanding warrant. Those are not serious
12 offenses.

13 After a 15-year study of the guidelines by the
14 Sentencing Commission, when you use the prior drug convictions,
15 when those were incorporated in the career offender
16 calculation, it shows the racial impact it has on that. The
17 simple fact of the matter is that crimes are prosecuted more
18 heavily, they're more easily detected in these open-air drug
19 markets. In the Hood in Erie, if Erie vice wanted to, or the
20 EAGLE Task Force, they could arrest probably five, ten people a
21 day, if all they wanted to do was go out and arrest people
22 selling a couple rocks of crack cocaine. It's a lot harder to

23 investigate drug crimes that occur in more affluent parts of
24 society. That is not a knock on law enforcement, it's the
25 reality of the situation. One crime is a lot easier to detect

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1 than the other. I think that's clearly what you have in this
2 case.

3 So I just strongly argue to the court that this is a
4 case where if the Booker discretion means something, it should

5 be exercised to say okay, a sentence within what the guidelines
6 would call for without a career offender enhancement is
7 sufficient. It is not greater than what's truly necessary.

8 THE COURT: All right, thank you, Mr. Patton.

9 MR. PATTON: Your Honor, I've discussed this with
10 Mr. Beason, Mr. Beason does not wish to make a statement to
11 your Honor.

12 THE COURT: Very good. All right, what do you want
13 to tell me, Mr. Trabold?

14 MR. TRABOLD: Your Honor, we would rely on our
15 previous filing in this case. Because it contains the thrust

16 of the government's argument. Which essentially is that Mr.

17 Beason has been unable to, throughout his lifetime, to abide by
18 the requirements of society in general, the criminal justice
19 system more specifically. He has had multiple involvements,
20 obviously, three prior adult convictions. But he also had
21 multiple juvenile involvements. Essentially, he has lived his
22 entire life in the criminal justice system.

23 What's troubling to me about the case and what I
24 think justifies the court's previous sentence, is that within a
25 matter of days after serving the maximum possible sentence on

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1 his last adult conviction, Mr. Beason committed the crime that
2 we're here on today. Demonstrating yet again that for however
3 many times he's been involved in the system, that he's unable
4 to conform his conduct to the requirements of ordinary society.

5 And this case really doesn't have anything to do
6 with racial disparity between individuals involved in drug
7 selling offenses. Quite simply, there's an easy way not to
8 find yourself in the criminal justice system, it has nothing to
9 do with race. Simply don't commit additional crimes.

10 Your Honor, the government respectfully disagrees
11 with your decision to grant a downward departure. Having
12 granted a downward departure, it's our position that you took
13 into account all of Mr. Beason's concerns at the earlier
14 sentencing with regard to career offender. And he's not
15 entitled, based on his prior record, his obvious inability to
16 rehabilitate himself, the fact he was only out on the street
17 for a mere matter of days after getting out for his last
18 offense, it's our position that the sentence you imposed before
19 was justified both under the guidelines and justified under
20 ordinary common sense that at some point the system has to take
21 into account a person's total inability or lack of desire to
22 rehabilitate themselves. No matter what the circumstances of
23 their prior crimes may have been. Thank you.

24 THE COURT: All right. I think first of all, for
25 the record, so the record is clear, I need to make some

1 findings before I do anything else. I want to take a short
2 break, I want to look at something in the previous sentencing
3 transcript. But the findings I am making now relate to or grow

4 out of the previous conclusion, the career offender status

5 applies. I recognize the defendant's objection to those, those

6 are all preserved for the reasons set forth on the record at

7 the previous sentencing on September 22, 2004. I concluded

8 then, as I conclude now, that career offender applies.

9 That having been said, the total offense level

10 applicable would be a 34. With a criminal history category of

11 VI. The statutory provision as to custody as to Count One,

12 25 years; as to Count Two, 20 years. The guideline provisions

13 262 To 327 months. Incidentally, lest I forget, I recognize

14 full well that the guidelines are now advisory by virtue of

15 Booker and its progeny. The statutory provision as to

16 probation inapplicable. Also inapplicable under the

17 guidelines. The statutory provision as to supervised release

18 as to Count One not more than five years. As to Count Two not

19 more than three years. The guideline provisions as to

20 supervised release as to Count One, three to five years. As to

21 Count Two, two to three years. Restitution is inapplicable

22 under both the statutory and guideline provisions. And a

23 special assessment of \$100 applies with respect to both.

24 I'm going to take a short break, then I'll come out

25 and impose sentence.

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1 (Recess from 9:19 a.m.; until 9:26 a.m.)

2 THE COURT: Mr. Patton, just so the record is clear,

3 let me ask your client directly, Mr. Beason, you understand

4 that you have the right now, you have an opportunity to address

5 me before sentencing, but is my understanding correct that you

6 don't want to do that?

7 THE DEFENDANT: No.

8 THE COURT: Well, that won't come out right. Is it

9 true, is it accurate that you know you have the right to

10 address the court but you don't want to do so, is that correct?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. First of all, with respect to

13 this sentencing, as I indicated earlier, I'm now well aware the

14 guidelines are advisory only. However, I'm required to consult

15 the Sentencing Guidelines in determining what would be an

16 appropriate sentence. In addition to the guidelines,

17 consistent with Booker, I also am required to consider various

18 other factors that are set forth at 3553(a), which require me

19 to impose a sentence that is "sufficient, but not greater than
20 necessary," to comply with the purposes that are set forth at
21 paragraph two. Section 3553(a)(2), states that such purposes
22 are:

23 (A) to reflect the seriousness of the offense, to
24 promote respect for the law, and to provide just punishment for
25 the offense;

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1 (B) to afford adequate deterrence to criminal
2 conduct;

3 (C) to protect the public from further crimes of
4 the defendant; and

5 (D) to provide the defendant with needed
6 educational or vocational training, medical care, or other
7 correctional treatment in the most effective manner.

8 Section 3553(a) also directs the sentencing court to
9 consider, (1) the nature and circumstances of the offense and
10 the history and characteristics of the defendant; the kinds of
11 sentences that are available; the need to avoid unwanted
12 sentencing disparities among defendants with similar records

13 who have been found guilty of similar conduct; and the need to
14 provide restitution to victims of those offenses.

15 So in fashioning the sentence here, I have carefully
16 considered the advisory guideline range, as well as the other
17 factors which I have articulated.

18 Let me also state for the record that the advisory
19 guideline -- let me say that again. At the previous sentence I
20 indicated that I felt that a downward departure such that a
21 total offense level of 31, with a criminal history category of
22 V was appropriate. For all of the reasons I previously set
23 forth, I incorporate them herein by reference. That said, it
24 would yield an advisory guideline range of 168 to 210 months.

25 In fashioning this sentence here today on Booker

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1 remand, I have, as I indicated, consistent with Booker,

2 considered and do consider several factors as set forth above.

3 First, with respect to the seriousness of the
4 offense. I believe on September 21, 2004, and I believe now,
5 that the offense was very serious, as it involved the physical

6 assault, striking of a female postal worker. I think it is of
7 some significant moment that the assault in this case occurred
8 approximately six days after the defendant had been released
9 from a period of incarceration. A review of the presentence
10 report in this case demonstrates that Mr. Beason has spent most
11 of his adult life in jail for a series of offenses which, as I
12 previously indicated, resulted in a finding of career offender.

13 Particularly, with respect to a defendant such as
14 Mr. Beason, I am convinced that the sentencing factor or policy
15 consideration and protection of the public looms very, very
16 large. And so I've considered all of those factors in
17 fashioning this sentence. All right, Mr. Beason, would you
18 stand up, please.

19 Pursuant to the Sentencing Reform Act of 1984, it is
20 the judgment of the court that the defendant, Demond Poetry
21 Beason, is hereby committed to the custody of the Bureau of
22 Prisons, to be imprisoned for a term of 190 months. This term
23 consists of 190 months at Count One and at Count Two, to be
24 served concurrently.

25 Upon release from imprisonment, the defendant shall

1 be placed on supervised release for a term of three years.
2 This term consists of three years at Count One, and three years
3 at Count Two, to run concurrently.

4 Within 72 hours of release from the custody of the
5 Bureau of Prisons, the defendant shall report in person to the
6 Probation Office in the district to which the defendant is
7 released.

8 While on supervised release, the defendant shall not
9 commit another federal, state or local crime, shall comply with
10 the standard conditions of supervision recommended by the
11 Sentencing Commission and adopted by this court, and shall
12 comply with the following additional conditions:

13 The defendant shall not illegally possess a
14 controlled substance.

15 The defendant shall not possess a firearm or
16 destructive device.

17 The defendant shall participate in a program of
18 testing and, if necessary, treatment for substance abuse as
19 directed by the probation officer until such time as the
20 defendant is released from the program by the probation

21 officer.

22 Further, the defendant shall be required to
23 contribute to the cost of services for any such treatment in an
24 amount determined by the probation officer, but not to exceed
25 the actual cost.

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1 The defendant shall submit to one drug urinalysis
2 within 15 days after being placed on supervision and at least
3 two periodic tests thereafter.

4 The defendant shall undergo a mental health
5 assessment and, if deemed necessary, shall participate in a
6 mental health treatment program as directed by the probation
7 officer until such time as the defendant is released from the
8 program by the probation officer.

9 It is further ordered that the defendant shall pay
10 to the United States a special assessment of \$200, which shall
11 be paid to the United States District Court Clerk forthwith.

12 I find this defendant does not have the ability to
13 pay a fine and, consequently, I will waive a fine in this case.

14 Mr. Beason, do you understand that you do have the

15 right to appeal this sentence that I imposed today --

16 THE DEFENDANT: I intend to.

17 THE COURT: If you can let me finish what I'm going

18 to tell you, to make sure you understand the timeframe. Do you

19 understand that you have to do so within 10 days?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Anything else, Mr. Patton?

22 MR. PATTON: No, sir.

23 THE COURT: Anything further from the government?

24 MR. TRABOLD: No, your Honor.

25 THE COURT: All right, we're adjourned.

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1 (Whereupon, at 9:35 a.m., the Resentencing

2 proceedings were concluded.)

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C E R T I F I C A T E

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11 I, Ronald J. Bench, certify that the foregoing is a
12 correct transcript from the record of proceedings in the
13 above-entitled matter.

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18 Ronald J. Bench

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